

**NOT FOR PUBLICATION**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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JOHN M. BURTON,	:	
	:	
Plaintiff,	:	Civil No. 05-2643 (JAP)
	:	
v.	:	
	:	
DEVON BROWN, et al.,	:	
	:	
Defendants.	:	

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**OPINION**

**APPEARANCES:**

JOHN M. BURTON, Plaintiff Pro Se  
Northern State Prison  
P.O. Box 2300  
Newark, New Jersey 07114

**PISANO**, District Judge

Plaintiff John M. Burton, a prisoner who is confined at Northern State Prison, seeks to bring this action in forma pauperis pursuant to 28 U.S.C. § 1915. Based upon his affidavit of poverty, prison account statement, and the absence of three prior dismissals within 28 U.S.C. § 1915(g), the Court (1) grants the application to proceed in forma pauperis; (2) directs the Clerk to file the Complaint; (3) assesses the \$250.00 filing fee against Plaintiff; (4) directs the New Jersey Department of Corrections ("NJDOC") to deduct an initial partial filing fee from Plaintiff's prison account and to forward it to the Clerk, when funds exist; and (5) directs the NJDOC to forward payments from Plaintiff's prison account to the Clerk each subsequent

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month that the amount in the account exceeds \$10.00, until the \$250.00 filing fee is paid in full. See 28 U.S.C. § 1915(a), (b). Having thoroughly reviewed the Complaint to identify cognizable claims, the Court dismisses the Complaint for failure to state a claim upon which relief may be granted. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(1).

### **I. BACKGROUND**

Plaintiff alleges civil rights violations arising from his removal from a halfway house and incarceration at a state facility by the NJDOC. He asserts the following facts. He alleges that, according to the classification criteria governing the NJDOC, he qualified for community release as of June 15, 2004. He asserts that in September 2004 he was transferred to Talbot Hall Assessment Center, a community based correctional facility under contract with the NJDOC, from Northern State Prison. He alleges that he was placed in the Clinton Halfway House, acquired employment, and participated in various programs designed to reintegrate him into the community.

Plaintiff asserts that on February 10, 2005, the NJDOC suddenly transferred him to the Youth Correctional Facility in Yardville, New Jersey, where he was held in semi-isolation for five days. He states that he was transferred to the Central Reception and Assignment Facility on February 15, 2005. He alleges that he appeared before the Classification Committee on

February 24, 2005. Defendant Hatrak allegedly informed Plaintiff that he had been removed from the halfway house because Plaintiff's wife had obtained a temporary restraining order against him. Plaintiff asserts that he told officials that they were mistaken. He alleges that his wife thereafter went to the family court, obtained a copy of the records showing that she had not sought or obtained a restraining order, and provided the record to NJDOC officials.

Plaintiff asserts that he appeared before the Classification Committee again on March 10, 2005. At this meeting, Defendant Hatrak told Plaintiff that he was removed from the halfway house based on a telephone call from a woman indicating that she was going to obtain a restraining order against Plaintiff. Plaintiff asserts that he informed officials that this was not accurate.

Plaintiff asserts that he was transferred to Northern State Prison on March 14, 2005. On March 24, 2005, Plaintiff appeared before the Classification Committee at Northern State Prison. He alleges that the chair person determined that he was indeed eligible for placement in a halfway house. However, officials later advised him that placement in a halfway house was not immediately available.

Plaintiff contends that Defendants violated his Fourteenth Amendment right to due process of law and inflicted cruel and unusual punishment contrary to the Eighth Amendment by removing

him from the halfway house without notice and opportunity to be heard. Plaintiff seeks declaratory relief, injunctive relief and damages for violation of his constitutional rights.

## **II. LEGAL STANDARD**

The in forma pauperis statute, as amended by the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996), requires the Court, prior to docketing or as soon as practicable after docketing, to review a complaint in a civil action in which a plaintiff is proceeding in forma pauperis or a prisoner seeks redress against a governmental employee or entity. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A. The PLRA requires the Court to sua sponte dismiss any claim if the Court determines that it is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. Id.

A pro se complaint is held to less stringent standards than formal pleadings drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972). A claim is frivolous if it "lacks even an arguable basis in law" or its factual allegations describe "fantastic or delusional scenarios." Neitzke v. Williams, 490 U.S. 319, 328 (1989); see also Roman v. Jeffes, 904 F.2d 192, 194 (3d Cir. 1990). "Given the Federal Rules' simplified standard for pleading, '[a] court may dismiss a complaint only if it is

clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." "

Swierkiewicz v. Soreman, 534 U.S. 506, 514 (2002) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)); see also Alston v. Parker, 363 F.3d 229, 233 n.6.

### **III. DISCUSSION**

Section 1983 of Title 42 of the United States Code authorizes a person such as Plaintiff to seek redress for a violation of his federal civil rights by a person who was acting under color of state law. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

To recover under 42 U.S.C. § 1983, a plaintiff must show two elements: (1) a person deprived him or caused him to be deprived of a right secured by the Constitution or laws of the United States, and (2) the deprivation was done under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970).

### A. Due Process

The Due Process Clause of the Fourteenth Amendment of the Constitution of the United States provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. IV. A person is entitled to due process of law only when government action deprives him or her of life, liberty, or property. See Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 7 (1979). To analyze Plaintiff's due process claim, the first step is to decide whether he was deprived of a liberty or property interest protected by due process. See Fuentes v. Shevin, 407 U.S. 67 (1972). If not, it is not necessary to consider what process is due. See Morrissey v. Brewer, 408 U.S. 471 (1972). Thus, Plaintiff was entitled to due process only if he had a protected liberty interest in avoiding removal from the halfway house and placement in a prison.

Liberty interests protected by the Due Process Clause of the Fourteenth Amendment may arise under the Due Process itself or may be created by state statutes or regulations. See Sandin v. Conner, 515 U.S. 472, 483-484 (1995). But "the Due Process Clause does not protect every change in the conditions of confinement having a substantial adverse impact on the prisoner." Id. at 478. "As long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed

upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight." Montanye v. Haymes, 427 U.S. 236, 242 (1976); see also Vitek v. Jones, 445 U.S. 480, 493 (1980).

It is established that a convicted inmate, such as Plaintiff, has no liberty interest arising by force of the Due Process Clause itself in retaining classification to a halfway house during the term of his sentence. See Meachum v. Fano, 427 U.S. 215, 223-25 (1976) ("given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty to the extent that the State may confine him [and] . . . [t]he Constitution does not . . . guarantee that the convicted prisoner will be placed in any particular prison"); Asquith v. Dep't of Corrections, 186 F.3d 407, 411 (3d Cir. 1999) (New Jersey prisoner confined in halfway house by classification committee has no liberty interest arising by force of the Due Process Clause in avoiding transfer to prison).

Although mandatory language in a state law or regulation can create a protected liberty interest where the alleged deprivation "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life", see Sandin, 515 U.S. 484, New Jersey has not created a liberty interest in retaining halfway house placement. See Asquith, 186 F.3d at 412

("Since an inmate is normally incarcerated in prison, [plaintiff's] return to prison [from a halfway house in New Jersey] did not impose atypical and significant hardship on him in relation to the ordinary incidents of prison life and, therefore, did not deprive him of a protected liberty interest.")

Because Plaintiff was not deprived of a protected liberty interest, he had no Fourteenth Amendment right to due process of law and the Court is constrained to dismiss the due process claim for failure to state a claim upon which relief may be granted.<sup>1</sup>

#### B. Eighth Amendment

Plaintiff asserts that Defendants inflicted cruel and unusual punishment by transferring him to maximum security

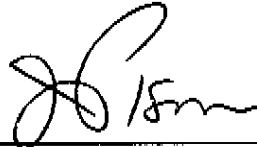
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<sup>1</sup> To the extent that Plaintiff contends that he had an independent liberty interest in Defendants' following prison regulations, his claim fails as a matter of law because the Constitution does not require states to follow their own procedures and law, if there is no underlying liberty or property interest. See, e.g., Hewitt v. Helms, 459 U.S. 460, 469 (1983) ("we have never held that statutes and regulations governing daily operation of a prison system conferred any liberty interest in and of themselves"); Olim v. Wakinekona, 461 U.S. 238, 250-251 (1983) ("Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement"); Owensboro Waterworks Co. v. City of Owensboro, 200 U.S. 38, 47 (1906) ("Many acts done by an agency of a state may be illegal in their character when tested by the laws of the state, . . . and yet they cannot, for that reason alone, be impeached as being inconsistent with the due process of law enjoined upon the states."); Elkin v. Fauver, 969 F.2d 48, 52 (3d Cir. 1992), cert. denied, 506 U.S. 977 (1992) ("An alleged violation of state law, however, does not state a claim under section 1983.").

confinement after removing him from the halfway house. This claim is likewise without merit and will be dismissed because Plaintiff was not denied a basic human need or deprived of the minimal civilized measure of life's necessities. See Wilson v. Seiter, 501 U.S. 294, 305 (1991).

#### **IV. CONCLUSION**

Based on the foregoing, the Court grants Plaintiff's application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and dismisses the Complaint pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim upon which relief may be granted.



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JOEL A. PISANO, U.S.D.J.

Dated: Sept 7, 2005